The Canadian Environmental Assessment Act (CEAA)

Five-Year Review

Métis National Council Final Report

April 7, 2000

The Five-year Review of the CEAA:

MNC Final Report 2000

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1. REPORT OVERVIEW

Introduction

The submission of this report to the Canadian Environmental Assessment Agency (Agency) is to provide an opportunity for the Metis National Council and it's governing member organizations to meaningfully participate in the Five-year review of the Canadian Environmental Assessment Act (CEAA). The MNC will herein provide recommendations to refine the environmental assessment process to make it more predictable, consistent and timely; recommend ways to further improve the quality of environmental assessments and; strengthening opportunities for participation of the MNC and its governing member organizations in the overall CEAA process.

This is a report of information accumulated from our internal discussion process. Its depth is limited due to a lack of proper financial resources available for this exercise. Another roadblock was the complexity of the issues pertaining to the Act. Clearly, if the MNC had been involved in CEAA information sharing as First Nations and Inuit organizations prior to the five-year Review a more comprehensive Final Report could have been completed.

The first section includes the Overview of the Report and Background information on the Métis Nation and political structure. The remaining two areas provide a blueprint of recommendations and suggestions from the MNC and its governing member organizations. It focuses on two areas that the MNC feels are current, responsible and realistic.

It also proposes an accountable strategy to fulfil two important components. These are to have on-going meaningful participation of the MNC and its governing member organizations in the CEAA process, and; to enhance the highest quality of Environmental Assessment practices in Canada, The MNC strategy includes:

- ***Refining and Improving the Quality of Environmental Assessments***
- ***Role of the MNC in Environmental Assessments***

1.1 Consultation

In December 1999, the MNC secured funding from the Canadian Environmental Assessment Agency (Agency) to design and implement a consultation process for the purposes of contributing to the Five-Year Review of the CEAA. As part of this consultation process, the MNC produced this Final Report on Métis specific issues

and recommendations to the Agency. 102-02202/

1.2 The Métis Nation

The Métis Nation evolved in the historic Northwest in the 18th and 19th centuries. Born of a mixture of French and Scottish fur traders and Cree, Dene, Ojiibwa, Saulteaux and Assiniboine women, the Métis in the Northwest developed as a people, distinct from either Indian or European.

Following the annexation of the Northwest by Canada in 1869, the political economy of the Métis was destroyed. Both the Manitoba Act (1870) and the Dominion Lands Act (1879) recognized Métis claims to Aboriginal title, but the federal government moved unilaterally to extinguish these claims through individual land grants and script. Denied the recognition of their collective rights, the Métis became "Canada's forgotten people." Only Alberta was any action taken to alleviate Métis distress through the establishment of Métis settlements by the provincial government in 1938. The Métis were officially recognized as one of Canada's Aboriginal Peoples in the Canadian Constitution, 1982.

According to the 1996 Census data, the Métis represent 26% of the Aboriginal population. Most Métis live in Western Canada, both in remote and urban communities and in Métis-only and mixed communities. There are over three hundred Métis communities, most are English speaking with some communities using Michif or other Aboriginal languages.

The Métis have never received the benefits governments grant to First Nations and Inuit. In its Final report the Royal Commission on Aboriginal Peoples stated; "it is unjust and unreasonable to withhold from Métis people the services and opportunities available to other Aboriginal peoples"

1.3The Métis National Council

The Métis National Council (MNC) is the national representative of the Métis Nation in Canada. The MNC was established in 1983, following recognition of the Métis as a distinct people with Aboriginal rights in the Constitution, 1982. The MNC has been recognized as the voice of the Métis Nation in constitutional negotiations at the national level, and acts as an advocate and negotiator for the Métis people with the Government of Canada and at national conferences and forums. It also represents the interests of the Métis people on the international stage.

1.4 MNC Organizational Structure

The MNC has an organizational structure composed of local, regional and provincial organizations. The MNC is governed by a Board of Governors made up of the Presidents of each Provincial member organization and the President of the MNC.

There are five member organizations, which include; the Métis Nation of Ontario (MNO), Manitoba Métis Federation (MMF), the Métis Nation of Saskatchewan

(MNS), the Métis Nation of Alberta (MNA) and the Métis Provincial Council of British Columbia (MPCBC). The President of each member organization is elected through ballot box elections, in which all Métis have a right to vote. The elected representatives of the member organizations elect the President of the MNC. The MNC national office is located in Ottawa.

1.5 MNC Mission Statement

The central goals and aspirations of the Métis Nation are to:

- Promote progress and prosperity among Métis people in all culture, social, economic and political fields;
- Achieve self-sufficiency for the Métis people and the institutions of the Métis Nation;
- Represent and promote the interests of the Métis Nation;
- Restore Métis lands and resources for future generations;
- Achieve the full recognition of the Métis nation and its jurisdiction within the Canadian federal system;
- Seek cooperative and productive relations with other governments and peoples based on mutual respect, sharing and tolerance;
- Maintain and promote respect for the individual rights and freedoms of the Métis people
- Maintain the independence and integrity of the Métis Nation, safeguard its stability and resist any aggression upon its existence as a people.

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2. REFINING AND IMPROVING THE QUALITY OF ENVIRONMENTAL ASSESSMENTS

Métis Issues and Recommendations

This section of the report is a compilation of issues and recommendations flagged by the MNC Advisory Committee on the five-year review of the CEAA. They are a reflection of grass root Métis concerns of environmental impacts of projects that have already occurred over the course of Canada's short history on Métis lands. Our understanding is that the CEAA is a tool to promote sustainable development, a predominantly "western-based view" held by governments and non-aboriginal peoples. The Métis argue that this "western based view" fuels only the need to promote economic development rather than sound environmental protection. At the core of the CEAA is to promote sustainable development, however, the Métis believe the central issue of sustainable development must be to ensure there is a equal balance and accountability of proponents toward the potential environmental impact of their projects on Métis communities' social, cultural and economic fabric.

To ensure that the Métis Nation continues to preserve and promote our traditional way of life and true sustainable development, the MNC recommends the following revisions to the CEAA:

2.1 "Section 48"

Section 48 does not recognize the Métis rights and interests

Under S. 48 of the CEAA, the term "land in respect of which Indians have interests" only suggests the First Nations have the right to engage in environmental assessments on Reserve lands, lands covered under the terms of Comprehensive land Claims and Treaty land Entitlement. S.48 does not recognize the Métis or apply to Métis Land Claims presently before the courts in Manitoba and Saskatchewan. Furthermore, it does not recognize traditional Métis lands in the CEAA nor does it recognize Métis rights and interests on traditional lands. The Métis Nation feel that a self-government agreement with the Crown should not be criteria for recognizing or determining the involvement of all Aboriginal peoples within the Act.

Recommendations:

- The CEAA to remain current with Section 35 of the Constitution Act, 1982 which recognizes Aboriginal peoples are the Métis, Indian and Inuit. The term "Aboriginal" is broader in scope than "Indian". The MNC states that the use and application of the term "Aboriginal" must be expanded to include all Aboriginal peoples pursuant to Section 35.

- S.48 of the CEAA be amended, as follows

  (d) lands that have been set aside for the use and benefit of Indians < **Inuit or Métis>** pursuant to legislation <or agreement with the Government of Canada> that relates to the self-government of Indians<, **Inuit or Métis>** and that are prescribed, or

  (e) lands in respect of which Indians <, **Inuit or Métis>** have interests,

  (2)(c) - similar

  (3)(d) - similar

  (6) For the purposes of this section, "lands in respect of which Indians <, **Inuit or Métis >** have interests" means...

  <(c) land areas to which Indians, Inuit or Métis claim an interest as their traditional hunting, gathering or ceremonial territory. >

2.2 Traditional Knowledge Resources

Traditional Knowledge is rooted in Métis culture and lifestyle. It is accepted that traditional knowledge is a type of knowledge that is rooted in indigenous views and values that are different from that of western based scientific systems.

The issue relating to traditional knowledge resources is that not completely accepted by governments or proponents, nor is it equally weighted with western based science. This is reflected in non-inclusion of traditional knowledge in current environment assessment processes.

There is currently a need for Aboriginal traditional Knowledge in the *Canadian Environmental Protection Act* (Preamble and section 2(1), *the Marine Conservation Areas Act* (facilities and research, The *Species at Risk Act* (Preamble), and this Act. The federal government has indicated that aboriginal traditional knowledge is also a priority for related legislation. There is a need for development of traditional knowledge resources for inter-departmental use as required. The MNC proposes that Environment Canada and the MNC engage in further discussions to develop a Métis traditional Knowledge resource strategy.

Recommendations:

- Environment Canada engage in further discussions with the MNC to develop a resource strategy for Métis traditional knowledge, including but not limited to a database of available traditional knowledge holders, and a process of recognition and remuneration for their services;

- S. 16 be amended, as follows,

  s. 16 (1) Every screening or comprehensive study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors:

  (a) the environmental effects of the project <**based upon traditional aboriginal knowledge wherever possible**>, including the environmental effects of malfunctions or accidents that may occur in connection ...

  Note S. 12 (3) requires every federal authority to share upon request knowledge in its possession with the responsible authority, mediator or review panel. They may argue that if we are a federal authority we must share traditional knowledge upon request. This may impact the issues of privacy and intellectual property raised by the MNC Internal Working Group.

2.3 Which Projects must be assessed?

" The interpretation of physical work and physical activity in the CEAA is of a great concern to Métis people and communities."

At the moment, there are two types of projects under the CEAA. A project can be the construction operation, decommissioning of, or other undertaking in relation to physical work. Second, a project can be a proposed physical activity not relating to a physical work if it is listed in the *Inclusion List regulations*. Most of the time, it is clear if a project is an undertaking in relation to a physical activity.

Clearly, the construction of a bridge is an undertaking in relation to physical work. However as an example, the cutting of trees could be argued not a physical project, but a physical activity; the *Inclusion List Regulations* provide that cutting trees may be a project in certain circumstances on federal lands. This example demonstrates the gaps in the *Inclusion List* and must be clarified because 85% of

all Aboriginal peoples live in Canada's forest belt. The Métis are dependent on these ecosystems to sustain and promote Métis traditional culture and lifestyle of harvesting, hunting and trapping.

Recommendations:

- Clarify and close gaps between physical work and physical activity in the CEAA
- Proponents shall work and consult with local Métis communities if potentially affected by projects
- Ensure that forestry and the industry that extracts these resources on federal lands are under the CEAA

2.5 Aboriginal Involvement in Harmonization

The federal, provincial and territorial governments each have their own environmental Assessment legislation. The Ministers of the Environment, except for Quebec, approved the Sub-agreement on Environmental Assessment in January 1998. Thus several bilateral agreements have been concluded or are in the process to do so. This is an effort to reduce duplication and streamline the environmental assessment process to the provinces.
The MNC and its governing member organizations were not involved in any meaningful discussions leading to these agreements, however, they do impede on the way environmental assessments are performed and how Métis participation will be applied to the environmental assessment process. The MNC is concerned with devolving responsibilities to the provinces because they hesitate to recognize Aboriginal participation in environmental assessments as related to Aboriginal rights.
Recommendation:

- The MNC believe in the concept of "shared stewardship" which incorporates the responsibilities to federal, provincial, territorial and Aboriginal governments (Métis, First Nations & Inuit). The MNC proposes this "shared stewardship" concept be applied to the CEAA

2.6 Additional Five-year Review Process

As you are aware that the environment and technology are constantly changing. Consultations with the MNC Advisory Committee have recommended that additional five-year review process occur.

Recommendation:

S. 72

(2) The Minister shall, within one year after a review is undertaken pursuant to subsection (1) < section 72.1 > or within such further times as the House of Commons may authorize, submit a report on the review to Parliament including a statement of any changes the Minister recommends.

<72.1 The Minister shall undertake a comprehensive review of the provisions and operation of this Act every five years commencing five years after the review set out in section 72

2.7 Reporting Agency/ Ombudsmen Office

Consultation with our Métis constituency confirmed that there is a need for a Reporting Agency or a Ombudsmen Office free of government or proponent control that the public can report to regarding environmental effects on-going at project sites. Intimation of government and Industry interests and of the environmental assessment processes currently in the CEAA has been expressed by Métis communities. Métis at the grass roots level have suggested the need for such an office to ensure all environmental, socio-economical impacts are reported on continually.

Recommendation:

- provide a separate reporting office or ombudsmen office to register complaints from the public

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3. ROLE OF MNC IN ENVIRONMENTAL ASSESSMENTS

Strengthening Opportunities for Meaningful Métis Participation

Métis people depend upon a vibrant, healthy environment to ensure a balance is maintained for their economic, social and cultural survival and quality of life. Based upon long acquired knowledge and capacity from being on the land, Métis have a long history of actively participating monitoring, assessing, and protecting the environment. For Métis people, this interaction with the environment still continues today.

At the present time, the MNC and its governing member organizations do not have a defined role in environmental assessments. The exception is only the current five-year review. Consultations with the Métis Nation have confirmed that our inclusion in the current CEAA has been grossly inadequate and the environmental assessment process dually managed by the federal and provincial governments has only promoted sustainable development, whereas provided little protection to the environment and Métis rights and interests. The MNC and its governing member organizations covet to be more involved in any future CEAA processes.

3.1 Jurisdiction

The jurisdiction of the MNC in environmental assessments is not presently recognized in the CEAA or in harmonization agreements between the federal,

provincial and territorial governments. It has long been the position of the Métis Nation that the Métis are encompassed by the term "Indian" in section 91 (24) of the Constitution Act, 1867. This position flows form the historical and legal recognition of the Métis people as an Aboriginal population with Aboriginal title and accordingly, with a fiduciary relationship with the Crown. The Métis takes the view that Métis self-government is already recognized and confirmed in the Constitution of Canada. This is why the Métis Nation supported the inherent right of Aboriginal self-government as set out in the Charlottetown Accord. The Royal Commission on Aboriginal Peoples has also recognized the existence of Aboriginal self-government within the Constitution of Canada.

The absence of land and resources has proven to be foremost impediment to the social, cultural and economic development of the Métis Nation since the Battle of Batoche and the execution of Louis Riel. Métis people believe the solution to their landlessness lies not in a general discussion of Aboriginal and Treaty rights - which inevitably focus on other Aboriginal peoples whose land claims are already recognized by Ottawa - but in the resolution of Métis land rights in the Manitoba Act (1870) and the Dominion Lands Act (1879).

In defining jurisdictional authorities in S.12(5) (c) and (d) which identifies Responsible Authorities and in S.40 (1) (c) and (d) relative to Joint panel reviews, the CEAA only recognizes First Nations or Inuit with settled land claims and legislated self-government agreements as having jurisdiction for environmental assessments. It does not recognize that the Métis Nation and its representative national political body, the MNC, to protect and preserve our rights and interests.

Recommendation:

- A full recognition and protection of Aboriginal rights and interests need to be included in the CEAA legislation as pursuant with Section 35 of the Constitution Act 1982
- the inclusion of MNC participation in all Harmonization Agreements on Environmental Assessments to ensure Métis rights and interests are protected

3.2 "Responsible Authority"

Responsible Authorities (RAs) in environmental assessments are federal departments and where cases apply include First Nations and Inuit reserve and/or negotiated lands. Presently, the CEAA does not recognize the MNC and its governing member organizations as RAs when a proposed project will have potential environmental impacts on Metis communities and traditional lands.

Recommendations:

- amend the Act to include " Responsible Authority" - jurisdiction where Metis rights and interests apply

  s. 2 "Federal Authority"

(c) ... , ~~and~~
<(d) an agency of the Assembly of First Nations, Inuit Tapirisat of Canada or the Métis National Council, and>
~~(d)~~ **<(e)>** any other body etc...

s. 5(1)

(c)..., ~~or~~

(d) :

<(e) is an agency of the Assembly of First Nations, Inuit Tapirisat of Canada or the Métis National Council who determines that the project will effect its rights or interests.>

s. 11 (5)

(d) ... legislation that relates to the self-government of ~~Indians~~ **<the Assembly of First Nations, Inuit Tapirisat of Canada or the Métis National Council>** and that has powers, duties or functions in relation to an assessment of the environmental effects of a project.

Or alternatively,

Section 59(d) allows the governor in council to prescribe any body, other than the government of a province, to be a federal authority for the purposes of this Act. Our alternate recommendation is to pass an Order in Council to prescribe in the regulations that an agency of the Métis National Council is a federal authority for the purposes of the Act.

s.2 "Federal Authority" (c)..., and

<(d) an agency of the Assembly of First Nations, Inuit Tapirisat of Canada or the Metis National Council

s.5(1) (c)..., or , (d)

<(e) is an agency of the Assembly of First Nations, Inuit Tapirisat of Canada or the Metis National Council who determines that the project will effect its rights or interests. >

s.11 (5) (d)... legislation that relates to the self-government of Indians

3.3 Regulatory Advisory Committee (RAC)

The MNC do not have representation on the CEAA Regulatory Advisory Committee as the Inuit and First Nations. (see pg 11)

Recommendations:

- For the CEAA to remain current with Section 35 Constitution Act, 1982
- For equal standing with First Nations and Inuit in the Regulatory Advisory Committee - A separate sub-committee will only continue to deaf Métis rights and interests in national forums

3.4 "Interested party"

The MNC is not recognized in the CEAA as a "interested party"

Recommendations:

- the amend the CEAA to include;

  . 2 "interested party" means, in respect of an environmental assessment, any person or body having an interest in the outcome of the environmental assessment for a purpose that is neither frivolous nor vexatious <**and may include Indian, Inuit or Métis persons or bodies where the project is located in whole or in part on land areas to which Indians, Inuit or Métis claim an interest as their traditional hunting, gathering or ceremonial territory**>;

3.5 Capacity Building/ Funding

The current Act only allows sufficient funding to be accessed through the Panel Review Class of Environmental Assessments. There is no obligation under the Act for the federal government or the proponent of the project to ensure that the MNC and its governing member organizations have adequate financial resources to meaningfully participate in environmental assessments where Metis rights and interests apply.

Recommendation:

- to provide equal, and adequate funding to the MNC and its governing member organizations in any future CEAA processes.
- Assist all National Aboriginal organizations equally in developing partnerships, programs or expertise in obtaining information mechanisms and processes of the Agency and the CEAA
- Métis people need to acquire formal scientific training in environmental assessments
- The Métis Nation need to be provided with sufficient resources to acquire these skills through education programs to conduct these activities in environmental assessments
- If need be, to amend as follows;

  s. 58 <**(j) establish a participant funding program to facilitate the participation of the Assembly of First Nations, Inuit Tapirisat of Canada and the Métis National Council in the environmental assessment process.**>

3.6 Meaningful Participation in the Environmental Assessment Process

The MNC and its governing member organizations do not have adequate opportunities to participate in environment assessments where Métis rights and interests to their inherent lands apply. Meaningful participation in the environmental assessment process is essential in ensuring Métis rights and interests are protected, which means; involvement in the early stages of environmental assessments, involvement on the monitoring of the on-going environmental effects on site and in-put into the approval process for a project. Furthermore, the MNC does insist that where our rights and interests are affected, we shall be included in any follow-up mechanisms or even develop our own processes to monitor proponents of their obligations to ensuring sound environmental practices.

Recommendations:

- To include or amend, as follows;

  Consultations

  If we are a federal authority then section 58(1)(d) allows for consultation with us to exchange information and the determination of factors to be considered in relation to the assessment of the environmental effects of projects of common interest. If not then we can add a specific reference in section 58.

  Also, section 50, allows the Minister to make orders where a project is referred to mediation or a review panel, provides for consultations with a federal authority.

- Language barrier - is a significant factor in the ability of many Métis communities, particularly in northern areas to understand the process and scientific language used in environmental assessments because many Métis communities may only speak Michif or Cree. To ensure that Métis people can participate in environmental assessments equally, the CEAA shall be amended as follows

  s. 58 (3) The Minister shall provide reasonable public notice of and a reasonable opportunity for anyone to comment on draft guidelines, codes of practice, agreements, arrangements, criteria or orders under this section **<and the Minister shall provide adequate resources to allow for the participation in both English and French as well as any aboriginal language prefered by such members of the public to comment>**.

- Timelines

  This goes to the criticism that aboriginal groups are not consulted early enough in the project to allow for adequate consultation. This is a moot

point if we are a federal authority. Perhaps general recommendations, rather than any specific proposed amendments go in to our paper to address a contingency plan should we fail in our attempt to become a federal authority.

- Monitoring

Monitoring is a method of tracking, measuring, assessing and evaluating a certain subject to provide insight into its current and future state. As it relates to the CEAA, there are monitoring processes in place from the Responsible Authorities and the Agency. The MNC has argued in this report to be a Responsible Authority where Métis rights and interests apply. There is a need for monitoring to occur on Métis traditional lands for many reasons. Métis people are very much connected to the land. They are dependent upon a healthy environment to ensure current Métis traditional practices can continue for future generations.

Monitoring is also important for the Métis Nation because the Métis have legal harvesting rights affirmed the recent decision handed down in the Powely case by the Ontario courts. If Métis people are unable to exercise these rights resulting from the development of projects, governments and proponents of these projects will liable for the impacts on our inherent rights. Only through future partnerships in monitoring processes with governments, proponents and the MNC and its governing member organizations can ensure protection and preservation of these harvesting rights.

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4. CONCLUSION

The MNC has tried to present a comprehensive review of the CEAA. The depth of this report is limited due to the complexity of the issues in the Act and the lack of proper financial resources available from Environment Canada. However, the MNC is encouraged that the Métis Nation is given an opportunity to develop a set of skills and knowledge into the environmental assessment process that will undoubtedly be built upon in our growing partnership with the Canadian Environmental Assessment Agency.

The issues and recommendations presented here seek to be included and given serious consideration in the national dialogue on where federal environmental assessments should be headed in Canada. The Five-Year Review of the CEAA has given the MNC and its governing member organizations the opportunity to express our collective views

And hope that these types of processes will continue in the future.

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